

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**4.373 ACRES, MORE OR LESS,
LOCATED IN HANCOCK COUNTY,
STATE OF MISSISSIPPI; MICHAEL
CARMICHAEL A/K/A MICHAEL
CARMICHEL; DONNA CARMICHAEL
A/K/A DONNA CARMICHEL;
CECILIA FOWLER KENNEDY A/K/A
GYPSY FOWLER KENNEDY; JOY
FOWLER HANO; UNKNOWN HEIRS
HEIRS AND/OR DEVISEES OF
KERRY BRYAN FOWLER;
HANCOCK COUNTY, MISSISSIPPI
JIMMIE LADNER, JR.,
TAX ASSESSOR; ET AL.**

Defendants.

CIVIL ACTION NO. 1:19cv551 LG-RHW

COMPLAINT IN CONDEMNATION WITH DECLARATION OF TAKING

1. This is a civil action brought by the United States of America at the request of the Secretary of the Navy through the Deputy Assistant Secretary for Energy, Installations and Environment, for the taking of property under the power of eminent domain through a Declaration of Taking and for the determination and award of just compensation to the owners and parties in interest.

2. This Court has jurisdiction over all relevant matters in the case as provided by 28 U.S.C. § 1358.

3. The authority for the acquisition of the estate in property taken is set forth in Schedule “A,” attached hereto and made a part hereof.

4. The public purpose for which the property is taken is set forth in Schedule “B,” attached hereto and made a part hereof.

5. A legal description of the land and interests being taken are set forth in Schedule “C,” attached hereto and made a part hereof.

6. The plat showing the land taken is set forth in Schedule “D,” attached hereto and made a part hereof.

7. The estate taken in the property is set forth in Schedule “E,” attached hereto and made a part hereof.

8. The amount estimated to be just compensation for the taking is set forth in Schedule “F,” attached hereto and made a part hereof.

9. The persons who may have or claim a purported interest in the property and whose names are known are listed in Schedule “G,” attached hereto and made a part hereof.

WHEREFORE, Plaintiff demands judgment that the property and interests be condemned, and that just compensation for the taking be ascertained, and such other relief as may be lawful and proper.

DATED: August 29, 2019

D. Michael Hurst, Jr.

United States Attorney

By: Emily S. Nobile
Assistant United States Attorney
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By: /s/ Bhavna Changrani
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
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Attorneys for Plaintiff United States of America

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

1:19-cv-551-LG-RHW

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Bhavna Changrani, U.S. Department of Justice, Environmental Natural Resources Division, P.O. Box 7611-Ben Franklin Station, Washington, DC 20044. Phone: 202-305-0304 Email: bhavna.changrani@usdoj.gov

DEFENDANTS

4.373 Acres of Land, more or less, Located in Hancock County, Mississippi; Carmichael, et al.

County of Residence of First Listed Defendant Hancock County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input checked="" type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1358

Brief description of cause:
Eminent domain

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See Instructions):

JUDGE

DOCKET NUMBER

DATE
08/29/2019

SIGNATURE OF ATTORNEY OF RECORD
/s/ Bhavna Changrani

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

SCHEDULE A

AUTHORITY FOR TAKING

This taking is filed pursuant to 40 U.S.C. § 3113; 40 U.S.C. § 3114; 10 U.S.C. § 2663(a)(1)(A); the National Defense Authorization Act for Fiscal Year 2015, P.L. 113-291 §§ 2201 and 4601 at 128 Stat. 3794, which authorized Military Construction Project 240, allowing for the acquisition of land; the Consolidated and Further Continuing Appropriations Act, 2015 P.L. 113-235, which appropriated funds.

The authority granted to the Secretary of the Navy in 10 U.S.C. § 2663(a)(1)(A) was delegated to the Assistant Secretary of the Navy (Energy, Installations, and Environment) (ASN (EI&E)) in SECNAVINST 5430.7R, dated 3 January 2017. This authority was further delegated from ASN (EI&E) to the Deputy Assistant Secretary of the Navy (Installations and Facilities) (DASN (I&F)) in an ASN (EI&E) memo, dated 27 March 2017.

SCHEDULE B

PUBLIC PURPOSE

The lands described in Schedule C are taken for the public purpose of national defense and military use by the United States as authorized by law, including, but not limited to, incorporation into the Western Maneuver Area, which is used for ground combat training by the Naval Special Warfare Command.

SCHEDULE C

LEGAL DESCRIPTION OF PROPERTY

A parcel of land depicted as Parcel 25A on Schedule D, situated in Section 30, (John Shave Claim) and Section 31, (Michael O'Conner Claim), Township 7 South, Range 16 West, Hancock County, Mississippi, and being more particularly described as follows:

PARCEL 25A

COMMENCING at a concrete monument found with disk at the northwest corner of said Section 30, Township 7 South, Range 16 West, Hancock County, Mississippi, said monument having the following state plane coordinates (MS EAST zone, NAD83 in feet): Northing 334779.34, Easting 727585.01; thence along the west line of said Section 30 and the west line of Section 31, S01°16'45"W 3379.29' to the south line of property of Bond and others as per deed book 2006 on page 15146, also being the north line of property of the Department of the Navy as per deed book 2006 on page 28847; thence along said line, N85°30'48"E 2797.48' to a concrete monument found at the northeast corner of said property of the Department of the Navy, said point being the POINT OF BEGINNING, and having the following state plane coordinates (MS East zone, nad83 in feet): Northing 331619.73, Easting 730298.47; thence along the south line of said property of Bond and others, N88°02'07"E 629.57' to the southwest corner of Corinth Cemetery; thence along the south line of Corinth Cemetery, East 131.17' to a pine tree having a 15" diameter; thence S15°04'04"E 5.00' to an iron pipe with disk set on offset; thence S15°04'04"E 55.05' to an iron pipe with disk set; thence S89°05'23"E 77.42' to an iron pipe with disk set on the west right-of-way of Mississippi Highway 607 as per State Aid Project SP-43-6(2), said right-of-way being 130 feet wide; thence along a curve of said west right-of-way of Mississippi Highway 607 to the left, having a radius of 1554.91', an arc length of 198.13' and a chord bearing and distance of S24°21'34"E 198.00' to a 1/2" rebar set at the northeast corner of property of the United States of America as per deed book

SCHEDULE C

2007 on page 21729; thence along the north line of said property of the United States of America, S89°27'50"W 818.49' to a 1/2" rebar set on the east line of property of Jean W. Kellar as per deed book 2014 on page 1022, said point being the northwest corner of said property of the United States of America; thence along the east line of said property of Jean W. Kellar and the east line of aforesaid property of the Department of the Navy, N27°19'32"W 254.00' to the POINT OF BEGINNING, containing 190,497.24 square feet or 4.373 acres. Herein described bearings are based on state plane grid north. Herein described property being a portion of that property described in deed book BB277 on page 772 of the land records of Hancock County, Mississippi, and being designated as part of county parcel number 089-0-30-009.000.

Recognizing inconsistencies may exist between the above legal descriptions, the United States of America's intent is to accurately describe and acquire all of county parcel number 089-0-30-009.000, except for the northeastern corner, depicted as Parcel 25B on Schedule D, and being more particularly described as follows:

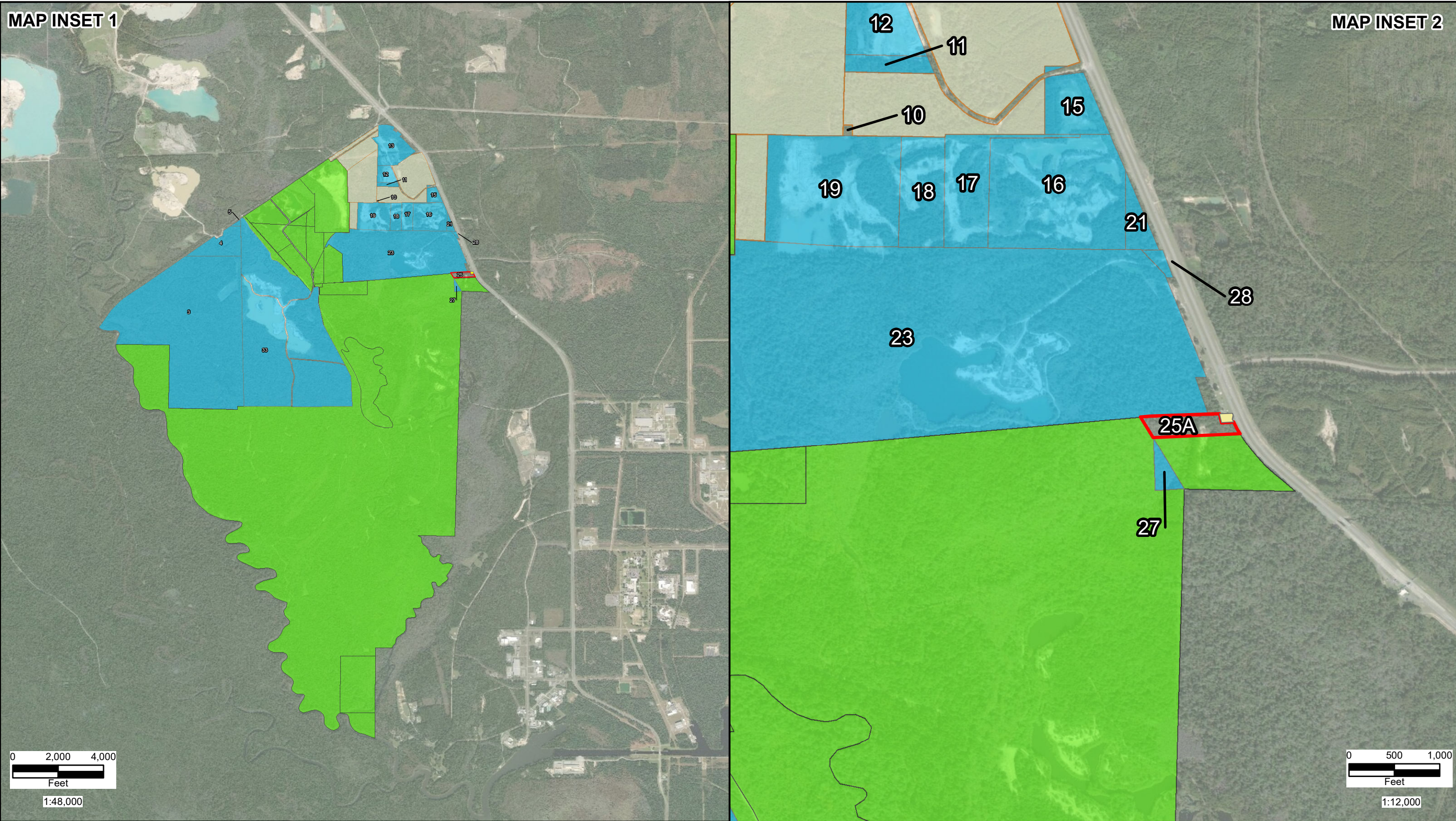
PARCEL 25B (excepted from taking)

COMMENCING at a concrete monument found with disk at the northwest corner of said Section 30, Township 7 South, Range 16 West, Hancock County, Mississippi, said monument having the following state plane coordinates (MS EAST zone, NAD83 in feet): Northing 334779.34, Easting 727585.01; thence along the west line of said Section 30 and the west line of Section 31, S01°16'45"W 3379.29' to the south line of property of Bond and others as per deed book 2006 on page 15146, also being the north line of property of the Department of the Navy as per deed book 2006 on page 28847; thence along said line, N85°30'48"E 2797.48' to a concrete monument found at the northeast corner of said property of the Department of the Navy; thence along the south line of said property of Bond and others, N88°02'07"E 629.57' to the southwest corner of

SCHEDULE C

Corinth Cemetery; thence along the south line of Corinth Cemetery, East 131.17' to the POINT OF BEGINNING, being a pine tree with a 15" diameter and having the following state plane coordinates (MS East zone, NAD83 in feet): Northing 331641.31, Easting 731058.84; thence further along the south line of Corinth Cemetery, East 90.33' to the southeast corner of an old concrete fence at the southeast corner of Corinth Cemetery, lying on the west right-of-way of Mississippi Highway 607 as per State Aid Project SP-43-6(2) plans; thence along the west right-of-way of Mississippi Highway 607, S09°24'35"W 36.32' to a concrete right-of-way marker found; thence along a curve of said west right-of-way of Mississippi Highway 607 to the left, having a radius of 1554.91', an arc length of 24.92' and a chord bearing and distance of S20°14'59"E 24.92' to an iron pipe with disk set; thence N89°05'23"W 77.42' to an iron pipe with disk set; thence N15°04'04"W 55.05' to an iron pipe with disk set on offset; thence N15°04'04"W 5.00' to the POINT OF BEGINNING, containing 4,684.09 square feet or 0.108 acres. Herein described bearings are based on state plane grid north. Herein described property being a portion of that property described in deed book BB277 on page 772 of the land records of Hancock County, Mississippi, and being designated as part of county parcel number 089-0-30-009.000.

SCHEDULE D



N62604-RR PARCEL 25		Parcel 25A	P-240
		Parcel 25B	Navy Owned
		NASA Owned Land	

PREPARED BY:
NAVFAC
Naval Facilities Engineering Command
Date: 8/21/2018
Naval Facilities Engineering Command Southeast
Asset Utilization Branch, AM1
Contact: SE CMP
Center (904) 542-6639

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SCHEDULE E

ESTATE TAKEN

The estate taken in the property described in Schedule C is fee simple absolute.

SCHEDULE F

ESTIMATE OF JUST COMPENSATION

The estimated just compensation for the property being taken is \$5,800.00.

SCHEDULE G**INTERESTED PARTIES**

Names and addresses of parties who have or may claim an interest in the parcel are as follows:

Party and any information currently known regarding the nature of the parties' legal interest	Record Reference
Cecilia "Gypsy" Fowler Kennedy 261 Inside Road Picayune, Mississippi 39466 <i>1/4 interest in the subject property</i>	Chancery Court Order of Pearl River County, State of Mississippi, approving the Amended First and Final Account in the Matter of the last will and testament of Mary Rose Salvaggio Fowler, deceased, recorded in official records on page 770 in book BB277 on February 13, 2004, Hancock County, Mississippi.
Joy Fowler Hano 213 Inside Road Picayune, Mississippi 39466 <i>1/4 interest in the subject property</i>	Same
Unknown Heirs and/or Devisees of Kerry Bryan Fowler (Address unknown) <i>1/4 interest in the subject property</i>	Same
Donna Carmichael a/k/a Donna Carmichel 213 Inside Road Picayune, Mississippi 39466 <i>1/8 interest in the subject property</i>	Same
Michael Carmichael a/k/a Michael Carmichel 213 Inside Road Picayune, Mississippi 39466 <i>1/8 interest in the subject property</i>	Same
Hancock County, Mississippi Jimmie Ladner, Jr., Tax Assessor 854 Highway 90, Suite C Bay St. Louis, Mississippi 39520	APN 089-0-30-009.000. Taxing Authority.